

No. 9(1)82-6Lab./330—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Municipal Committee, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER LABOUR COURT,
HARYANA, ROHTAK

Reference No. 183 of 1980

Between

SHRI HAWA SINGH, WORKMAN AND THE MANAGEMENT OF M/S MUNICIPAL
COMMITTEE, ROHTAK

Present—

Shri S.N. Vats, for the workman.

Shri Ram Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RTK / 35-80/44428, dated 19th August, 1980 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Hawa Singh, workman and the management of M/s. M.C., Rohtak. The term of the reference was :—

Whether the termination of services of Shri Hawa Singh was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings and the only issue 'As per the term of reference' was framed on the basis of their pleadings.

The management examined Shri Ram Singh, Octroi Superintendent as their witness and closed their case. The workman examined himself as his witness and closed his case. I heard the learned representatives of the parties and decide issue as under.

The management witness stated that the workman was given duty as baildar w.e.f. 1st May, 1978 on daily wage basis after the abolition of the Improvement Trust. He was performing the duties of watering the trees alongside the roads and parks and to take care of these. He works upto 31st December, 1978 on daily wage basis thereafter absented himself on 1st January, 1979 and came back on duty on 2nd January, 1979 and worked upto 9th April, 1979 and then again left the services of the management from 10th April, 1979 to 30th April, 1979 and again worked from 1st May, 1979 to 30th June, 1979. Then after again he absented himself on 1st July, 1979 and again worked from 2nd July, 1979 to 31st July, 1979. The workman again absented himself from 1st August, 1979 to 31st August, 1979 and again worked from 1st September, 1979 to 30th September, 1979. He further stated that the workman was not given duty on 1st October, 1979 onwards for shortage of funds and also the work for which he engaged came to a close. The witness gave out in his cross examination that the baildars working on the parks were definitely taken in service by the Municipal Committee from the Improvement Trust when the Improvement Trust was abolished. He further stated in his cross examination that he did not know whether Shri Hawa Singh, employed in the year 1975 by the Improvement Trust. He further gave out that the figures given in his examination in chief were collected from the wage register and the muster roll but he had not brought the same that day. The workman was removed from service as there was no work left with the Municipal Committee. He admitted that no notice, notice pay in lieu thereof or any retrenchment Compensation was paid to the workman as he was not their employee. He denied as wrong that the workman was on monthly wage basis and it was also wrong that his attendance was marked in the attendance register. He has admitted in his cross examination that the management did not take any plea during conciliation proceedings that the workman was given fresh employment at times when he remained absent and rejoined duties nor as to on which dates the workman remained absent. He could not admit or deny that the Municipal Committee took over all the functions of the Improvement Trust.

The workman deposed that he was appointed as Mali in the Improvement Trust in June, 1976 and he was transferred to Municipal Committee Rohtak from Improvement Trust on 28th May, 1978. The Municipal Committee took over all the liabilities and assets from the Improvement Trust alongwith all the employees of the trust. He was getting Rs. 217 per month as his wages and he was not paid any notice, notice pay or service compensation at the time of his termination. The workman denied as wrong that he attended his duties at his pleasure in fact he worked continuously for four years and he did not absent himself from 10th April, 1979 to 30th April, 1979. He further stated that the certificate Mark 'A' was given by Shri Hari Ram Gupta and not Goel who was Engineer in the Improvement Trust.

The management has laid a great stress on the fact that the workman was engaged on daily wage basis as and when the exigency of the work demanded and the workman was not appointed on regular or permanent basis. It has also been contended on behalf of the management that the workman attended his duties and absented from duties as and when he so pleased and the management allowed him duty on the availability of funds and work. The management did not substantiate their case through the help of the record which was in their possession. It seems that the management withheld the record knowing it fully well that if produced the same would have gone against them. I am therefore but to draw an adverse inference that from the attendance and the wage record it would have been established that the workman was not working on daily wage basis and also he has not remained absent on the days which have been given by the management witness in his statement. If it had not been so the management would have certainly produced the record in support of their contention., The management witness have also stated that the employees of the Improvement Trust were surely taken by the Municipal Committee and there is no evidence that the employees were given fresh employment. The presumption, in the absence of any such evidence, is that the workman was taken on duty on his old terms and conditions of service. From Mark 'A' the version of the workman is proved that he worked as baildar in the Improvement Trust from June, 1976 to May, 1978 and then after transferred to Municipal Committee alongwith the colony in which he was working. Even if his service with the Improvement Trust, is not counted he has put in more than 240 days of service with the respondent. The termination of the workman without serving him with any notice or without payment of notice pay in lieu thereof or the retrenchment Compensation. The facts which have been admitted by the management witness, is violative of mandatory provisions of section 25F A and 25F(b). The order of termination becomes void *ab-initio* and the same is therefore neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated 31st December, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 8, dated 4th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-6Lab/331.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Market Committee, Bhiwani.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT HARYANA
ROHTAK

Reference No. 207 of 1980

Between

SHRI KANHYA LAL, WORKMAN AND THE MANAGEMENT OF MARKET
COMMITTEE, BHIWANI.

Present:—Shri Sagar Ram Gupta, for the workman.

Shri Om Parkash Lohariwala, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/HSR/21-80/50707, dated 23rd September, 1980 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Kanhya Lal, workman and the management of Market Committee, Bhiwani. The term of the reference was :—

Whether the termination of services of Shri Kanhya Lal was justified and in order? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings and the following issues were framed on the basis of the pleas of the parties :—

1. Whether the reference is bad in law as per preliminary objection from 1 to 4 of the written statement?

2. Whether the Market Committee is not covered under the definition of Industry as given in section 2(J) of the I.D. Act ? If so, to what effect ?
3. As per the term of reference ?

The management examined Shri Ram Rattan Hooda, Secretary respondent as their only witness and closed their case. The workman examined himself as his sole witness and closed his case. I heard the learned representatives of the parties and decide issues as under :—

Issue No. 1 & 2.—The management did not adduce any evidence nor pressed the issues during the course of arguments. The same are therefor decided against the management.

Issue No. 3.—The management witness has deposed that the workman was appointed,—*vide* Ex. MW-1/1. The Administrator ordered,—*vide* Ex. MW-1/2 that instead of three peons two peons would easily do the job and the junior most be retrenched,—*vide* this order the services of Shri Subhash Chander was terminated. On receipt of representation of Shri Subhash Chander Ex. MW-1/3 the Administrator, Market Committee, Bhiwani asked for the seniority list from the Secretary who submitted the list of Ex. MW-1/4 Kanhya Lal workman was found junior to Subhash Chander and accordingly Subhash Chander was reinstated and Kanhya Lal was terminated.—*vide* order Ex. MW-1/5 and MW-1/6 respectively. He further stated that an offer was made to the workman for re-employment on daily wages basis but he refused to accept the offer. He further stated that the workman filed a suit before the Sub-Judge Bhiwani which was dismissed wherein the workman has stated that he cultivated land as a co-partner. The management witness gave out in his cross examination that the workman was confirmed,—*vide* resolution Ex. W-1 on the post of Mali-cum-Chowkidar and Ex. W-2 was the reply sent by the Administrator to the Director Local Bodies. He also admitted that four employees given in the list Ex. MW-1/4 from bottom were removed from service and two of them namely Chhotu Ram and Surinder Kumar were taken on duty during the pendency of their references in the Labour Court and Shri Surinder Kumar has been awarded reinstatement with full back wages by Court. He also admitted as correct that Subhash Chander was appointed as peon and not as Chowkidar-cum-Mali. He also admitted that no retrenchment compensation or notice pay was given to the workman. He also admitted as correct that the suit of the applicant was dismissed on ground of lack of jurisdiction.

The workman deposed that he was appointed as Chowkidar cum-Mali in 1975. Shri Subhash Chander was working as peon. He was not paid any notice pay or retrenchment compensation at the time of his termination. Shri Surinder Kumar and Chhotu Ram were terminated alongwith him but they were taken back on duty. The management never offered to take him back on duty on the old terms and conditions of his service. The workman admitted that he filed his claim for reinstatement in the Labour Court after about one and a half year of his termination. He further stated that he rejected the offer of the management to join the service as daily wages. He denied as wrong that he is not interested in service and he knowingly and intentionally filed the case in the Labour Court after one and a half year of his termination.

From Ex. MW-1/2 it is clear that one post of peon was to be abolished and as Shri Subhash Chander, peon was junior most among the peons he was retrenched. On the representation of Shri Subhash Chander the seniority list was prepared in respect of the Peon, sweeper, Peon-cum-Chowkidar and Chowkidar-cum-Mali. In this list it was found that Shri Subhash Chander Peon was Senior to Kanhya Lal workman. The management then reinstated Shri Subhash Chander and terminated the services of Shri Kanhya Lal. By order Ex. MW-1/2 the management has specifically abolished the post of peon as there were three peons working in the Marketing Committee and the management has justified that order by retrenching the chowkidar-cum-mali instead of the peon. I am not convinced with this justification may be Shri Kanhya Lal Chowkidar-cum-Mali was junior to Shri Subhash Chander. It has also been admitted that the workman was not given any notice or notice pay in lieu thereof nor he was paid any retrenchment compensation though he was confirmed employee of the management,—*vide* Ex. W-1 duly admitted by the management. The management has thus violated the provisions of section 25F(A) and 25F(b) which are mandatory and non-compliance of the conditions renders the order of termination void *ab initio*. The termination is therefore neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with 50% back wages as he has raised his demand for reinstatement after two years of his termination and the plea of the workman that he sought his redress in the court of Sub-Judge Bhiwani is of no assistance to him as the management can not be punished for no fault of theirs and for wrong of the workman. The reference is answered and returned accordingly that

Dated 31st December, 1981

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 9, Dated 4th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.